IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 470 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANLAL & COMPANY
- THRO' KARTA SHANTILAL MOHANLAL SHAH AND OTHERS
Versus
AGRAWAL COMPLEX VIKAS MANDAL
THROUGH GUNVANT SHAH OR SAMIR SOOD AND OTHERS

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Appearance :
MR MB GANDHI for the Appellants

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/11/2006

ORAL JUDGMENT

The appellants herein are the original plaintiffs Nos.1 to 3 of Civil Suit No.883 of 2002 which is pending before the City Civil Court at Ahmedabad. The plaintiffs have filed the said suit for a declaration and permanent injunction to the effect that defendants Nos.2 and 4 are not entitled to act as the members and office bearers of defendant No.1 Association. A declaration is also sought regarding fixation of maintenance at the rate of Rs.10 per square feet. It is also prayed that a declaration may be given to the effect that the act of defendant No.1 to 4 to deprive the facility of lift is null and void. A mandatory injunction is also prayed against defendants to provide and restore the facility of lift and water supply to the plaintiff and other members. In the said suit interim injunction was prayed for in the similar lines. The said suit is resisted by the defendants on various grounds.

The learned trial Judge by his judgment and order dated 26.09.2002 allowed the Notice of Motion partly and the defendants are restrained from paying any further share to any builder in regard to the provisions for fire safety measures in respect of the scheme in question till the decision of the suit. The other prayers in the interim injunction were rejected by the learned trial Judge.

The original plaintiffs have filed this appeal from order challenging the aforesaid order. The learned Single Judge of this Court passed the following order in Civil Application No.8469 of 2002 on 9.12.2002:-

> 1. On 27th November, 2002, this Court passed the following order :
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> “Rule returnable on 9th December, 2002. Direct Service is permitted."

2. Mr.M.B.Gandhi, learned Advocate appearing for the applicants, states that an affidavit is filed that service of this order is refused by opponent nos.1, 2 and 3. He states that so far as opponent no.4 is concerned, though its employees were available, they refused to accept service of the process of this Court. He further submitted that so far as opponent no.5 is concerned, nobody was available and hence, opponent no.5 could not be served.

Mr.Gandhi, learned Advocate appearing for the applicants, produces a xerox copy of electricity bill for Consumer No.80704.

3. In light of the refusal of the process of this Court by the opponents, by way of interim relief till final disposal of the Appeal From Order, the present applicants are allowed to operate one lift through the Consumer No.870524 and expenditure thereof shall be borne aforesaid source of electricity connection bearing by them. The applicants are directed to file an undertaking before this Court to the effect that they shall pay all past dues, if any, in respect of Consumer No.870524 to the Ahmedabad Electricity Company Ltd. and shall pay regular electricity consumption charges hereafter.

4. With the aforesaid directions, this Civil Application stands allowed. Rule is made absolute to the aforesaid extent only. No order as to costs."

Mr Gandhi pointed out that at present all members are using the lift and all are contributing the amount required for maintenance of the lift and at present the lift is being operated. An undertaking is also filed by one Shantilal Mohanlal Shah on behalf of Mohanlal & Company that he will take necessary steps for the purpose of making the lift operational

and for its maintenance a contract is entered into with Trio Elevators Private Limited and as per the said contract said said Shantilal Mohanlal Shah will meet with the liability of maintenance of the lift and will make regular payment. The undertaking is also taken on record.

Mr MB Gandhi states that the present arrangement is going on well and most of the other members of the Association are contributing and are enjoying the lift facility. Considering the aforesaid fact, the interim order passed by this Court is required to be made absolute till the suit is decided. Accordingly, during the pendency of the suit the appellants herein are permitted to continue to operate the lift through the source of electricity connection bearing Service No.870524 and the expenditure thereof shall be borne by the appellants. The undertaking given in the aforesaid appeal is ordered to be continued on the same line till the suit is decided. The appellants to pay necessary electricity consumption charges. The appellants shall also take appropriate steps for proper maintenance of the lift and they will also take action for checking and repairing the lift regularly so that no untoward incident may occur.

Subject to the aforesaid observations and directions this appeal from order is allowed. No order as to costs.

(P.B.MAJMUDAR, J.)

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